IN THE HIGH COURT OF BOMBAY AT GOA
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WRIT PETITION NO. 64 OF 2001

Mr. Joao Santan Dias
(since deceased)
through his legal heirs:-

1(a) Mrs. Maria
Seoasciana Antao Dias,
age 75 years, widow,

1(b) Mr. Luis Dias, age
43 years, son,

1(c) Mrs. Meera Dias,
age 31 years,
daughter-in-law,

1(d) Mr. Agnelo Dias,
age 39 years, son,

1(e) Mrs. Marietta Dias,
age 37 years,
daughter-in-law,

1(f) Miss Sandra Dias,
age 35 years, daughter,

1(g) Mrs. Vescy D'Cruz,
age 40 years, daughter,

1(h) Mr. Ashton D'Cruz,
age 40 years, son-in-law,

All r/o 3/18, Poonam
Co-operative Housing
Society, Mukund Nagar,
Andheri (East),
Mumbai, 400 059,

1(i) Mrs. Savia Fernandes,
age 45 years, daughter,

1(j) Mr. Prazeros Nicodemus
Milagres Fernandes,
age 50 years, son-in-law,

Both r/o 402, Savrabh
Apartments, Sir Mathuradas
Vasanji Road, Andheri (East),
Mumbai 400 093 ... Petitioners

Versus

1. The Village Panchayat of

Naquerim (Betul), through its Sarpanch, with its office at Betul, N.C. Goa, PIN CODE 403 603,

2. Office of the Director, Department of Science, Technology & Environment, Government of Goa, Opp. Saligao Seminary, Saligao, Bardez, Goa,

3. The Chief Town Planner, Town and Country Planning Department, Panaji, Goa,

4. The Deputy Town Planner, Town and Country Planning Department, Quepem, Goa,

5. Director of Panchayats, Government of Goa, Panaji, Goa,

6. Deputy Director of Panchayats, Government of Goa, Margao, Goa,

7. Mr. Joseph Jesus Fernandes,

8. Mr. Cruz Teotenio Fernandes,

9. A) Mrs. Emma Felicia Fernandes and

   B) Mrs. Frenzy Fernandes,

10. Mr. Julio Mario D'Silva,

11. Mr. Damasco D'Silva,

12. Mr. Joaquim Vicent D'Silva,

13. Mr. Damaco Nicolas D'Silva,

14. Mrs. Willuna D'Silva,

15. Mr. Tomas D'Silv,

16.Mr. Cruz D'Silva,
all major of age,
all r/o Canaguini,
P.O. Canaguini via
Cuncolim, Goa,
PIN CODE 403 703 ... Respondents.

Shri S. D. Lotlikar, Senior Advocate with Shri A. D. Bhobe, advocate for the petitioners.

Shri C. A. Coutinho, advocate for the respondent no.1.

Shri S. Vahidulla, Addl. Govt. Advocate for the respondents no. 2 to 6.

Shri M. P. Almeida, advocate for the respondents no. 11 to 16.

CORAM: D. G. DESHPANDE &
P. V. HARDAS, JJ.

DATE: 8th January, 2003.

ORAL JUDGMENT (Per Deshpande, J.)

Heard learned advocates for the petitioners and the respondents. The original petitioner claims to be the owner of certain survey numbers and according to him, the respondents no. 7 to 16 forcibly occupied portions of his property and made constructions thereupon on the basis of licences granted by the Village Panchayat. In this petition, the petitioners seek firstly the demolition of the constructions, declaration that the authorities concerned have granted licences illegally without following the process prescribed by law and the next relief that is claimed is regarding quashing and setting aside of the Common Order of the Deputy Director of Panchayats dated 21st November, 2000, in proceedings in which the original petitioner appeared as an intervener.

2. After hearing both the sides, it appears to us that firstly the title of the petitioner in respect of the property which he claims to be his own is seriously disputed by the respondents, particularly respondents no.6 to 16. The original petitioner has filed a civil suit for declaration of ownership in respect of the suit property in the year 1989. A copy of the plaint is on record at page 225 and from para 7 of the plaint it is clear that not only the defendants were claiming the property as against the rights of the plaintiffs, but even the revenue record was changed and therefore, in the prayer of the said suit, the original petitioner apart from claiming declaration of ownership, also claimed correction of the revenue record in respect of his property. It has to be noted at this stage that in the said suit eventhough the correction of the revenue record was prayed for by the original petitioner, no authority of the State was joined as defendant.

3. It is further revealed that this suit which the plaintiffs had filed in 1989 for the aforesaid nature of declaration, was subsequently withdrawn by them on 26th December, 2000 and a counter-claim which the defendants had made for deletion of the name of the original petitioner from the revenue record, is still pending before the Court.

4. It is also borne out from the record and admitted by the parties that in the civil suit, the original

petitioner had not claimed any injunction against the respondents no.6 to 17 restraining them from proceeding with the construction on the basis of the licences issued by the Village Panchayat. Neither in this petition any such order is sought. Consequently, as result, the construction made by the respondents has been completed long back, at least during the pendency of the petition or earlier thereto.

5. It is, therefore, clear from the plaint and from the submissions made by the learned counsel for the respondents, that the title of the petitioners is seriously disputed by the respondents in the aforesaid property. The withdrawal of the suit by the petitioners creates still more hurdles in the way and in our view there is no reason for entertaining and deciding this petition, because there are disputed questions of fact not only regarding ownership, but also regarding correctness of survey in dispute before us.

6. The learned counsel for the petitioners however contended that when the matter was before the Deputy Director and the Village Panchayat was called upon to produce the licences and other documents, the Village Panchayat firstly did not produce the documents promptly and secondly when they were produced it could not be said that the licences were properly issued, or were issued after due verification with the records of the authorities. Our attention was drawn to the annexures in the petition wherein the details regarding

the taxes/fees, receipt no. and date are blank.

7. However, now the Village Panchayat, respondent no.1, which is represented by learned counsel Shri Coutinho, filed all the relevant papers on record and excepting the case of respondent no.16, the Village Panchayat granted licences after resolutions were passed by the Village Panchayat and that the permissions were granted by the Village Panchayat after concurrence and approval from the Town and Country Planning Authority, the P.W.D. and the Goa State Committee for Coastal Environment. Therefore, according to the respondent no.2 and the other respondents, whatever was required to be complied with has been complied with before the grant of licences.

8. Next, it was contended on behalf of the respondents that if at all the petitioner is aggrieved by the Order of the Deputy Director, he had a right of appeal. However, without going into that question what remains in this petition is that firstly the petitioner has not been able to prove his title in the property and he has withdrawn his suit. Even the revenue record in his favour is disputed and challenged and that is clear from the counter-claim which is still subsisting. It is a basic principle of law that for entertaining and deciding writ petitions and claiming relief by way of Writ Petition, courts should not entertain disputed questions of fact. Therefore, in view of the fact that the

title of the petitioner is seriously in dispute and it is challenged, so also the revenue record standing in his name and when from the submissions made by the respondent Village Panchayat in particular, the authorities have taken caution and care before issuing the licences, we do not find any merit in this petition and the same needs to be dismissed.

The Writ Petition is dismissed with no order as to costs.

D. G. DESHPANDE,J.

P. V.HARDAS, J.

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